

REMARKS

Applicants respectfully request reconsideration of the above-captioned application.

Claim 1 has been amended to eliminate the reference numbers and to change a phrase "is connected to" to the more easily understood "engages". Additionally, claims 2, 3 and 4 have been added to bring out a patentable distinctions of the present invention. The phrase "a tube" appearing in claim 1, line 2 has been replaced with "the tube".

The Office Action includes a rejection of claim 1 under 35 U.S.C. §112, second paragraph, as allegedly being indefinite noting a perceived lack of antecedent basis for the phrase "a tube" as appears in line 2 of claim 1. It is respectfully submitted that one of ordinary skill in the art in reading the application would not be confused as to whether there was a second tube involved in claim 1. Accordingly, Applicants respectfully traverse the rejection. However, clarification could be easily provided and, accordingly, the phrase has been changed in the manner suggested in the Office Action.

In light of the foregoing comments, Applicants respectfully request reconsideration and withdrawal of this rejection.

The Office Action includes a rejection of claim 1 under 35 U.S.C. §103(a) as allegedly being unpatentable over the *Brown et al.* patent (U.S. Patent No. 4,748,990). This rejection is respectfully traversed.

The *Brown et al.* patent discloses a cosmetic applicator which includes, as shown in Figures 3-5, a central sealing plug 46 for plugging the end of a container 12. This plug 46 includes a projecting stem 66.

The projecting stem 66 engages a frusto-conical 124 recess section of a central bore of a lower section 22 of a bottle cap 14. The bottle cap 14, as disclosed in column 6, lines 62-66, also includes an upper brush holder 26 and an overcap 24, which is designed to be removable from the integrally connected two other parts.

It is respectfully submitted that the Office Action does not accurately characterize the *Brown et al.* patent as including a brush tube whose bottom is connected to or engages the discharge hole, thereby opening and closing the discharge hole. In fact, to the degree an analogy can be drawn between the central sealing plug of the *Brown et al.* patent could be considered an inner cover, it would nevertheless remain that the discharge hole would most analogously be drawn as the slots 70, as shown in Figure 7 and described in column 6, lines 57-61. These slots, however, do not engage the bottom of the brush tube. Instead, as mentioned above, the stem 66 engages the frusto-conical opening 124 of the lower section 22 of the cap 14. As described in column 7 beginning at line 45, this design is provided to "compliment and sealingly engage the tapered or beveled surface 74 on the valve stem 66." Further, attached to the end of the valve stem is an eccentric pin or spike 78, which as described in column 14 beginning at line 61 is designed to trace a relatively wide circumferential path so as to dislodge any hard residue that may be deposited in the through bore 126.

It is respectfully submitted that the *Brown et al.* patent, therefore, does not teach basic features of claim 1. Further, it is respectfully submitted that there is no motivation for abandoning the stem structure of the *Brown et al.* patent, particularly with the eccentric spike 78 and its function to result in an embodiment where the bottom of a brush tube

engages a discharge hole of an inner cover, to thereby open and close the discharge hole, as positively recited in the pending claims.

It is also noted that the *Brown et al.* patent identifies as one of its objects to provide a device that is simple to manufacture and therefore relatively inexpensive to purchase. However, the *Brown et al.* patent is relatively complex compared to the present invention.

In fact, it is the present invention's potential for simplicity, as gained through the design of having the bottom of the brush tube engage the discharge hole of an inner cover, that leads to significant advantages evident in certain exemplary embodiments of the present invention. Obviously, the *Brown et al.* patent, with its stated object of simplified construction, did not envision the present invention, which is a clear indication of nonobviousness.

Further, any modifications necessary to achieve the present invention, would also necessarily result in the destruction of the purpose of the *Brown et al.* patent, which includes that the eccentric spike can clear the discharge bore of residual material. It is also noted with respect in Figure 3 that the spike does not appear to be eccentric. However, it nevertheless would serve the function of clearing debris, which would not be achieved through a modification that would result in the present invention.

Finally, it is noted that as cited in original claim 1, the discharge tube is recited as being "integrally formed" on the center of the lid. As clearly disclosed in the *Brown et al.* patent at column 6 lines 62-67, the lower section and upper brush holder and overcap 24 are "integrally connected", but not integrally formed. This is necessary insofar as the various components appear to be separately formed in order to achieve the desired

structure. For instance, it would seem difficult, if not impossible, to form the intermediate frusto-conical section 182, as shown in Figure 3, for instance. Applicants note that they have added claims 3 and 4, which are similar to claim 1 and 2, but are presented in a more conventional U.S. claim format and do not include some recitations such as the brush tube being integrally formed on the center of a lid. Instead independent claim 3 recites that the brush tube is centrally located on a lid.

In light of the foregoing, Applicants respectfully request reconsideration and allowance of the above-captioned application. Should any residual issues be present, the Examiner is invited to contact the undersigned at the number listed below.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

By: 
Charles F. Wieland III
Registration No. 33,096

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620

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